

FILED

AUG 19 2013

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY
CALDERON,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case Number: CV12-02952 HRL

**COURT RULINGS RE
DEFENDANTS' OBJECTIONS TO
DECLARATION OF PLAINTIFF LUIS
HERNANDEZ**

Date: July 9, 2013

Time: 10:00 am

Courtroom: 2

Mag. Judge: Howard R. Lloyd

Defendant City of San Jose objects to the Declaration of Plaintiff Luis Hernandez submitted in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment as follows:

1. Defendants object to Paragraph 2, 1:10-11 ("I was harassed and retaliated...for exercising my First Amendment Rights") on the grounds the statement contained therein is an inadmissible opinion and conclusion for which no foundational facts are stated.

Defendants further object to Paragraph 2, 1:12-14 ("That obviously overbroad-and-illegal prior restraint on speech violated the public's right to know about public corruption.") on the

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1 grounds that the statement is an inadmissible legal opinion and conclusion for which no
2 foundational facts are stated.

3 Court's Ruling on Objection 1: Sustained: ✓

4 Overruled: _____

5 2. Defendants object to Paragraph 3, 1:16-20 ("Indeed, our Department has
6 history, pattern, usage, and practice of using harassment and retaliation to intimidate
7 whistleblowers of all types, e.g. for those civilian and sworn police personnel complaining
8 about corruption, race, sex, or age discrimination, simply any complaint about top
9 management or its pets.") on the grounds that the statement is inadmissible speculation,
10 opinion and conclusion for which no foundational facts are stated.

11 Court's Ruling on Objection 2: Sustained: ✓

12 Overruled: _____

13 3 Defendants object to Paragraph 4, 1:28-29 ("I was given the evidence by a
14 fearful whistleblower, who wanted a second copy secured in case her original was
15 'conveniently lost.'") on the grounds the statement is inadmissible speculation, opinion and
16 conclusion. The statement is inadmissible speculation regarding an unidentified third
17 parties' state of mind. Defendants further object to Paragraph 4, 1:30-2:1 ("This informant,
18 a low-level female employee of the City was afraid that somehow command staff would
19 interfere with her retirement.") on the grounds the statement is inadmissible opinion,
20 conclusion and speculation about a third party's state of mind. Defendants also object to
21 Paragraph 4, 2:2-4 ("It was clear that she was frightened about the potential for police
22 harassment, retaliation, destruction of the evidence she handed over to me for
23 safekeeping.") on the grounds the statement is inadmissible opinion, conclusion and
24 speculation about a third party's state of mind.

25 Court's Ruling on Objection 3: Sustained: ✓

26 Overruled: _____

27 4. Defendants object to Paragraph 5 in its entirety and supporting evidence, or
28 exhibit, as irrelevant and inadmissible hearsay. Defendant further objects to the paragraph

1 and supporting evidence, or exhibit, as they lack foundation. The supporting evidence, or
 2 exhibit, is also objectionable because the document speaks for itself.

3 Court's Ruling on Objection 4: Sustained: ✓

4 Overruled: _____

5 5. Defendants object to Paragraph 6, 2:14 insofar as the term "illegal" is
 6 inadmissible opinion, conclusion and speculation. It is also objectionable as inadmissible
 7 legal opinion and conclusion. Defendants also object to Paragraph 6, 2:14-16 ("the SJP
 8 retaliated and harassed a perfectly-innocent close-personal friend and long-time colleague
 9 of mine – Cindy Calderon—in order to "get" at me and make me suffer.") as inadmissible
 10 opinion, conclusion and speculation. This statement lacks foundation and is also
 11 objectionable as speculation about the state of mind of others. Defendants further object
 12 to Paragraph 6, 2:17-18 ("they violated our First Amendment rights, including our right to
 13 associate together, simply because the good old boys' club" was angry and wanted to
 14 punish me.") as inadmissible opinion, conclusion and speculation. This statement is also
 15 objectionable as inadmissible legal opinion and conclusion and as speculation about third
 16 party state of mind. Defendant also objects to Paragraph 6, 2:19-20 ("they knew they
 17 could get to me by hurting her") as inadmissible opinion, conclusion and speculation. It is
 18 also objectionable as speculation about the state of mind of another.

19 Court's Ruling on Objection 5: Sustained: ✓

20 Overruled: _____

21 6. Defendants object to Paragraph 7, 2:25-27 ("it was widely believed that I had
 22 made the phone call which started the investigation against Zarate") on the grounds the
 23 statement is inadmissible opinion, conclusion and speculation for which no foundational
 24 facts are stated. Defendants further object to Paragraph 7, 2:27 ("I was targeted by
 25 command staff as if I had reported Zarate's crimes") on the grounds the statement is

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1 inadmissible opinion, conclusion and speculation for which no foundational facts are
2 stated.

3 Court's Ruling on Objection 6: Sustained: ✓

4 Overruled: _____

5 8. Defendants object to Paragraph 8 in its entirety as inadmissible hearsay,
6 opinion and conclusion. Defendants also object to the evidence, or exhibits, submitted in
7 support of Paragraph 8 on the grounds that the newspaper and online articles attached as
8 Exhibits A-E lack foundation and are irrelevant and insufficient to sustain the statements.
9 Plaintiffs' characterization of Exhibits A-E is inadmissible hearsay and is objectionable
10 because the documents speak for themselves. The documents constitute the inadmissible
11 opinion, conclusion and speculation of the reporter or author. The content of the articles is
12 inadmissible hearsay. Although Plaintiffs argue the exhibits are not being offered for the
13 truth of the matters asserted, in order to accept the argument advanced by Plaintiffs, the
14 premise of the articles must be accepted as true, thereby requiring Plaintiffs to offer the
15 articles for their truth.

16 Court's Ruling on Objection 8: Sustained: AS TO THE ARTICLES' CONTENTS

17 Overruled: INsofar AS THE EXISTENCE OF ARTICLES

18 TEND TO SHOW MEDIA INTEREST IN ZARATE'S ALLEGED CONDUCT

19 9. Defendants object to Paragraph 9 in its entirety and the supporting evidence,
20 or exhibit, as inadmissible hearsay, opinion and conclusion. Defendants also object to the
21 evidence, or exhibit, submitted in support of Paragraph 9 on the grounds that the news, or
22 online, feature or article attached as Exhibit F lacks foundation, is irrelevant and insufficient
23 to sustain the statements. Plaintiffs' characterization of Exhibit F is inadmissible hearsay
24 and is objectionable because the exhibit speaks for itself. The exhibit constitutes the
25 inadmissible opinion, conclusion and speculation of the reporter or author. The content of
26 the exhibit is inadmissible hearsay. Although Plaintiff argues the exhibit is not being
27 offered for the truth of the matters asserted, in order to accept the argument advanced by

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1 Plaintiff, the premise of the exhibit must be accepted as true, thereby requiring Plaintiff to
2 offer the exhibit for its truth.

3 Court's Ruling on Objection 9: Sustained: AS TO THE DOCUMENT CONTENTS

4 Overruled: INsofar AS THE EXISTENCE OF THE
5 ARTICLE TENDS TO SHOW PUBLIC INTEREST RE ZARATE'S ALLEGED CONDUCT
10. Defendants object to Paragraph 10 in its entirety as Exhibits A-F lack

6 foundation, are irrelevant and insufficient to sustain the statements. Plaintiffs'
7 characterization of Exhibits A- F is inadmissible hearsay and is objectionable because the
8 exhibit speaks for itself. The exhibits constitute the inadmissible opinion, conclusion and
9 speculation of the reporter or author. The content of the exhibits is inadmissible hearsay.
10 Although Plaintiff argues the exhibits are not being offered for the truth of the matters
11 asserted, in order to accept the argument advanced by Plaintiff, the premise of the exhibits
12 must be accepted as true, thereby requiring Plaintiff to offer the exhibits for their truth.

13 Court's Ruling on Objection 10: Sustained: _____

14 Overruled: ✓

15 11. Defendants object to Paragraph 15, 8:14-15 ("Sgt. Zarate's response was
16 'You know how it is, you take care of me I'll take care of you.') as inadmissible hearsay.

17 Court's Ruling on Objection 11: Sustained: ✓

18 Overruled: _____

19 12. Defendants object to Paragraph 17, 8:22-24 ("Sgt. Zarate attempted to make
20 a joke of the situation...Sgt. Zarate seemed to get angry.") on the grounds the statement is
21 inadmissible opinion, conclusion and speculation about a third parties' state of mind.

22 Court's Ruling on Objection 13: Sustained: _____

23 Overruled: ✓

24 14. Defendants object to Paragraph 20, 9:7 ("fearful female whistleblower") on
25 the grounds the term "fearful" is inadmissible opinion, conclusion and speculation about a
26 third parties' state of mind.

27 Court's Ruling on Objection 14: Sustained: ✓

28 Overruled: _____

15. Defendants object to Paragraph 21, 9:11-12 (“...it was clear that Lt. Werkema was trying to intimidate me from questioning Sgt. Zarate’s conduct.”) on the grounds the statement is inadmissible opinion, conclusion and speculation regarding another’s state of mind. Defendant further objects to line 13-14 (“Lt. Werkema said to me: What the fuck is your problem with Sgt. Zarate?”) on the grounds the statement is inadmissible hearsay.

Court's Ruling on Objection 15: Sustained: ✓
Overruled:

16. Defendants object to Paragraph 25, 10:1-3 ("I am informed and believe that the reason for my reassignment was to retaliate against me for publicly reporting Sgt. Zarate's time-sheet fraud.") on the grounds that the statement is inadmissible opinion and conclusion. The statement lacks foundation and speculates about the state of minds of another.

Court's Ruling on Objection 16: Sustained: ✓
Overruled: _____

17. Defendants object to Paragraph 26, 10:10-11 ("Lt. Werkema eliminated my position so that I would be sent back to the Patrol Division.") on the grounds the statement is inadmissible opinion, conclusion and speculation regarding the state of mind of another. Defendants further object to this statement on the grounds the Plaintiff fails to establish a factual foundation for the conclusion contained therein. Defendant further objects to Paragraph 26, 16-17 ("His perjury at his deposition is evidence of a guilty motive and pretext.") as inadmissible opinion, conclusion and speculation.

Court's Ruling on Objection 17: Sustained: ✓
Overruled: _____

18. Defendants object to Paragraph 28, 10:23-24 (“...Sgt. Brooks called me into his office and told me that Lt Werkema told him to change the evaluation...”)

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1 grounds the statement is inadmissible hearsay.

2 Court's Ruling on Objection 18: Sustained: ✓

3 Overruled: _____

4 19. Defendants object to Paragraph 29 in its entirety on the grounds the
5 statement is inadmissible opinion, conclusion and speculation regarding another's state of
6 mind.

7 Court's Ruling on Objection 19: Sustained: ✓

8 Overruled: _____

9 20. Defendants object to Paragraph 30, 11:7 ("Werkema had retaliated against
10 me...") on the grounds the statement is inadmissible opinion, conclusion, speculation and
11 legal opinion.

12 Court's Ruling on Objection 20: Sustained: ✓

13 Overruled: _____

14 21. Defendants object to Paragraph 31, 11:9 ("Sgt. Brooks told me that because
15 Lt. Werkema had given him a direct order to lower the evaluation rating from "above
16 standard" to only "meets standard," he had to comply, but noted that the written entries
17 would reflect an "above standards" evaluation on the grounds the statement is
18 inadmissible hearsay. Defendants further object to lines 11:11-13 ("I am informed and
19 believe that the reason for the downward change in my performance review was to
20 retaliate against me for telling people about Sgt. Zarate's time sheet fraud.") on the
21 grounds the statement is inadmissible opinion, conclusion and speculation. Defendants
22 also object to lines 13-15 ("A 'meets standard evaluation at the San Jose Police
23 Department is a kiss of death for promotion, kind of like a "Gentleman's C" on your record
24 would doomed you when trying to get into Harvard or Stanford Law School.") on the
25 grounds the statement is inadmissible opinion, conclusion and speculation. It also lacks
26 foundation.

27 Court's Ruling on Objection 21: Sustained: ✓

28 Overruled: _____

22. Defendants object to Paragraph 32 in it's entirety on the grounds the statements are inadmissible opinion, conclusion and speculation for which no foundational facts are stated.

Court's Ruling on Objection 22: Sustained: ✓

Overruled: _____

23. Defendants object to Paragraph 35, 1-4 ("Capt. Martinez, along with other SJPd employees...had their own reasons to help cover-up Sgt. Zarate's frauds as they also had secondary employment with the Eastside Unified School District and themselves reported to Sgt. Zarate in the job.") on the grounds statement is inadmissible opinion, conclusion and speculation as to the state of mind of others. Defendants further object to lines 5-6 ("It should be noted that the Fraud Bureau Chief Capt. Manuel Martinez and Lt. Werkema were such close friends officers referred to them as brothers.") on the grounds the statement is inadmissible opinion, conclusion and speculation for which no foundational facts are stated.

Court's Ruling on Objection 23: Sustained: ✓

Overruled: _____

24. Defendants object to Paragraph 36, 12:9 "a phrase in common use by patrol officers was the "Brown Brotherhood" to describe the police command-staff insiders who were Hispanic or Latino like Zarate and Alcantar.") on the grounds the statement is inadmissible hearsay, opinion, conclusion and speculation for which no foundational facts are stated. Defendants also object to lines 11-12 ("In fact a few of Zarate's nicknames at the SJPd were "Slimy" and "the Mexican Don King.") on the grounds the statement is irrelevant and inadmissible hearsay for which no foundational facts are stated.

Court's Ruling on Objection 24: Sustained: ✓

Overruled: _____

25. Defendants object to Paragraph 38 in its entirety on the grounds the statement is inadmissible opinion, conclusion and speculation of third parties' state of mind
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1 for which no foundational facts are stated.

2 Court's Ruling on Objection 25: Sustained: ✓

3 Overruled:

4 26. Defendants object to Paragraph 40, 12:22-25 ("From my discussions with
5 Cindy Calderon, it became clear that the fraud unit was not making any real effort to
6 investigate Sgt. Zarate because Officer Calderon was one of the main fraud investigator
7 [sic] in the unit, who management avoided assigning the case because of her connection
8 with me.") on the grounds the statement is inadmissible opinion, conclusion and
9 speculation for which no foundational facts are stated.

10 Court's Ruling on Objection 26: Sustained: ✓

11 Overruled:

12 27. Defendants object to Paragraph 41, 12:30-13:1 (Sgt. St. Amour told me he
13 would judge me on merit not what command staff told him.") on the grounds the statement
14 is inadmissible hearsay.

15 Court's Ruling on Objection 27: Sustained: ✓

16 Overruled:

17 28. Defendants object to Paragraph 44, 13:9-10 ("Sgt. Matthew Elvander called
18 me to say that Capt. Alcantar wanted to have a "man-to-man" meeting with me.") on the
19 grounds the statement is inadmissible hearsay.

20 Court's Ruling on Objection 28: Sustained: ✓

21 Overruled:

22 29. Defendants object to Paragraph 46, 13:15-16 ("...there was no conceivable
23 justification for such a broad order") on the grounds the statement is inadmissible opinion,
24 conclusion and speculation.

25 Court's Ruling on Objection 29: Sustained: ✓

26 Overruled:

27 30. Defendants object to Paragraph 47, 13:20 ("...singing his praises were Lt.
28 John Spicer, Lt. Francisco Aviles and Lt. James Werkema, three of the staff members that

1 have been instrumental in retaliating against and creating a hostile work environment for
 2 me and officer Calderon.") on the grounds the statement is inadmissible opinion and
 3 conclusion that lacks foundation.

4 Court's Ruling on Objection 30: Sustained: ✓

5 Overruled: _____

6 31. Defendants object to Paragraph 50, 14:3-5 ("When Sgt. Bortolotti later
 7 called me back, he said that Lt. Spicer appeared upset and said the test would be done by
 8 seniority and the applicants would be notified by City e-mail.") on the grounds the
 9 statement is inadmissible hearsay. The statement is also objectionable as speculation of
 10 third party state of mind and inadmissible opinion that lacks foundation. Defendants
 11 further object to Paragraph 50, 14:7-8 ("This was an obvious ploy to prevent me from
 12 taking the test.") on the grounds the statement is inadmissible opinion, conclusion and
 13 speculation that lacks foundation.

14 Court's Ruling on Objection 31: Sustained: ✓

15 Overruled: _____

16 32. Defendants object to Paragraph 51, 14:10-12 ("...in the past, consideration
 17 for seniority and out-of-town vacations had always been valid reasons for being placed at
 18 the end of the testing cycle.") on the grounds the statement is inadmissible opinion,
 19 conclusion and speculation that lack foundation.

20 Court's Ruling on Objection 32: Sustained: ✓

21 Overruled: _____

22 33. Defendants object to Paragraph 52 in its entirety on the grounds that the
 23 statements contained therein are inadmissible opinion, conclusion and speculation that
 24 lack foundation.

25 Court's Ruling on Objection 33: Sustained: ✓

26 Overruled: _____

27 34. Defendants object to Paragraph 53, 14:20-22 ("The purpose served in having
 28 me go first is to set a baseline, so the raters don't run the risk of needing to later score

1 other applicants higher than me.") on the grounds the statement is inadmissible opinion,
 2 conclusion and speculation that lack foundation.

3 Court's Ruling on Objection 34: Sustained: ✓

4 Overruled:

5 35. Defendants object to Paragraph 54 in its entirety on the grounds the
 6 statement is inadmissible opinion, conclusion and speculation that lack foundation.

7 Court's Ruling on Objection 35: Sustained: ✓

8 Overruled:

9 36. Defendants object to Paragraph 59, 15:9-12 ("...the SJPd used seniority as
 10 an excuse for its efforts to ensure that I would not be available to take the test in retaliation
 11 for my statements about Sgt. Zarate's time-card fraud...Again, the SJPd used seniority
 12 this time to create a baseline ensuring that their selected officers simply had to get a better
 13 score than Officer Calderon or me.") on the grounds the statements are inadmissible
 14 opinion, conclusion and speculation that lack foundation. Defendants further object to
 15 Paragraph 59, 15:17-18 ("I believe that was done in retaliation for my statements about
 16 Sgt. Zarate's time-card fraud.") on the grounds the statement is inadmissible opinion,
 17 conclusion and speculation that lack foundation.

18 Court's Ruling on Objection 36: Sustained: ✓

19 Overruled:

20 37. Defendants object to Paragraph 62, 15:29-30 insofar as the statement is
 21 conclusory and based on speculation as to whether "the City's risk management
 22 office...agreed" and fails to establish a factual foundation for that conclusion.

23 Court's Ruling on Objection 37: Sustained:

24 Overruled: ✓

25 38. Defendants object to Paragraph 63 in its entirety on the grounds the
 26 statement contained therein is inadmissible speculation, opinion and conclusion and fails

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1 to establish a sufficient factual foundation for that conclusion.

2 Court's Ruling on Objection 38: Sustained: ✓

3 Overruled: _____

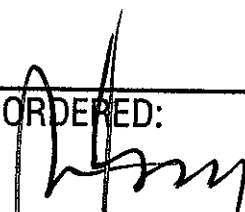
4 Respectfully submitted,

5 Dated: _____

6 RICHARD DOYLE, City Attorney

7
8 By: /s/ Nkia D. Richardson
9 NKIA D. RICHARDSON
10 Sr. Deputy City Attorney

11 Attorneys for Defendants

12
13 IT IS SO ORDERED:
14 
15 HOWARD R. LLOYD
16 U.S. MAGISTRATE JUDGE
17 DATE: 8/19/13
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RICHARD DOYLE, City Attorney (88625)
 NORA FRIMANN, Assistant City Attorney (93249)
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY
 CALDERON,

Plaintiffs,

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CITY OF SAN JOSE, et al.,

Defendants.

Case Number: CV12-02952 HRL

**COURT RULINGS RE
 DEFENDANTS OBJECTIONS TO
 DECLARATION OF PLAINTIFF CINDY
 CALDERON**

Date: July 9, 2013

Time: 10:00 am

Courtroom: 2

Mag. Judge: Howard R. Lloyd

Defendants City of San Jose, San Jose Police Department, Ernie Alcantar, and James Werkema object to the Declaration of Plaintiff Cindy Calderon submitted In Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment as follows:

1. Defendants object to Paragraph 3, 1:11 as conclusory and based on speculation about whether Lou "spoke to people inside and outside the Department about the public-corruption problems at the Airport posed by Sgt. Zarate." This statement about what or to whom Lou spoke fails to establish factual foundation for that conclusion.

Court's Ruling on Objection 1: Sustained: ☒

Overruled: ☐

2. Defendants object to Paragraph 4 in its entirety on the grounds the statements contained therein are inadmissible opinion, conclusion and speculation. The statements are also objectionable in that the declarant fails to establish a factual foundation for the conclusions contained therein. Defendants further object insofar as the statement in line 5-6 ("His source believed these documents would be destroyed if she turned them over to the command staff.") is inadmissible hearsay, opinion, conclusion and speculation regarding another's state of mind.

Court's Ruling on Objection 2: Sustained: ✓
Overruled: _____

3. Defendants object to Paragraph 6 in its entirety as inadmissible hearsay and speculation as to another's state of mind.

Court's Ruling on Objection 3: Sustained: ✓
Overruled: _____

4. Defendants object to Paragraph 7 in its entirety as inadmissible hearsay. Plaintiff's testimony is also inadmissible speculation regarding others' state of mind.

Court's Ruling on Objection 4: Sustained: ✓
Overruled: _____

5. Defendants object to Paragraph 8, 2:20-22 ("Sgt. Kenny Rawson said to me that he had been interviewed and that he told Sgt. Akemann to talk to Lou about the Zarate matter.") as inadmissible hearsay and compound hearsay. Defendants further object to this statement insofar as it lacks foundation.

Court's Ruling on Objection 5: Sustained: ✓
Overruled: _____

6. Defendants object to Paragraph 9, 2:25-26 ("Sgt. Ackemann never interviewed Lou and, in fact, avoided him.") on the grounds the statement is inadmissible speculation as to another's state of mind. Defendant further objects to this statement as

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1 inadmissible opinion and conclusion that lacks foundation.

2 Court's Ruling on Objection 6: Sustained: ✓

3 Overruled:

4 7. Defendants object to Paragraph 10, 1:27-28 ("As it turns out, Lou was never
5 interviewed.") on the grounds the statement lacks foundation for the conclusion contained
6 therein.

7 Court's Ruling on Objection 7: Sustained: ✓

8 Overruled:

9 8. Defendants object to Paragraph 12, 3:8 ("This information must have had an
10 impact on the outcome of the case, because the POA agreed to fund Sgt. Zarate's
11 defense.") on the grounds the statement is inadmissible opinion and conclusion that lacks
12 foundation. The statement is also objectionable as speculation about another's state of
13 mind.

14 Court's Ruling on Objection 8: Sustained: ✓

15 Overruled:

16 9. Defendants object to Paragraph 13 in its entirety as inadmissible opinion,
17 conclusion and speculation. It is also objectionable in that it lacks foundation.

18 Court's Ruling on Objection 9: Sustained: ✓

19 Overruled:

20 10. Defendants object to Paragraph 14 in its entirety as inadmissible opinion,
21 conclusion and speculation. It is also objectionable in that it that lacks foundation.

22 Court's Ruling on Objection 10: Sustained: ✓

23 Overruled:

24 11. Defendants object to Paragraph 16 insofar as Plaintiff's cite to and
25 characterization of her performance evaluation are inadmissible hearsay. It is also
26 objectionable in that the document speaks for itself.

27 Court's Ruling on Objection 11: Sustained: ✓

28 Overruled:

12. Defendants object to Paragraph 17 insofar as Plaintiff's cite to and characterization of her performance evaluation are inadmissible hearsay. It is also objectionable in that the document speaks for itself.

Court's Ruling on Objection 12: Sustained: ✓

Overruled: _____

13. Defendants object to Paragraph 18 in its entirety as inadmissible opinion, conclusion and speculation that lacks foundation.

Court's Ruling on Objection 13: Sustained: ✓

Overruled: _____

14. Defendants object to Paragraph 19, 5:16-18 ("...officer [sic] Hernandez and I were punished for our perceived talking to the press and people outside the Department.") on the grounds the statement contained therein is inadmissible opinion, conclusion and speculation that lacks foundation.

Court's Ruling on Objection 14: Sustained: ✓

Overruled: _____

15. Defendants object to Paragraph 20 in its entirety as inadmissible legal opinion and conclusion. Defendants also object as no foundational facts are stated. It is also objectionable in that the text of the case speaks for itself. Defendants further object to this paragraph in that it contains no facts to establish the content represents anything other than the irrelevant reiteration of another's legal opinion and does not contain any facts about which the declarant has any personal knowledge.

Court's Ruling on Objection 15: Sustained: ✓

Overruled: _____

16. Defendants object to Paragraph 22 in its entirety as inadmissible legal opinion and conclusion. Defendants also object to this paragraph as no foundational facts are stated. It is also objectionable in that the text of the case speaks for itself. Defendants further object to this paragraph in that it contains no facts to establish the

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1 content represents anything other than the irrelevant reiteration of another's legal opinion
 2 and does not contain any facts about which the declarant has any personal knowledge.

3 Court's Ruling on Objection 16: Sustained: ✓

4 Overruled: _____

5 17. Defendants object to Paragraph 23 in its entirety as inadmissible opinion,
 6 conclusion and speculation. It is also objectionable in that it lacks foundational facts
 7 sufficient to support the conclusion contained therein.

8 Court's Ruling on Objection 17: Sustained: ✓

9 Overruled: _____

10 18. Defendants object to Paragraph 24 in its entirety as inadmissible legal
 11 opinion and conclusion. Defendants also object to this paragraph as no foundational facts
 12 are stated. It is also objectionable in that the text of the case speaks for itself. Defendants
 13 further object to this paragraph in that it contains no facts to establish the content
 14 represents anything other than the irrelevant reiteration of another's legal opinion and does
 15 not contain any facts about which the declarant has any personal knowledge.

16 Court's Ruling on Objection 18: Sustained: ✓

17 Overruled: _____

18 19. Defendants object to Paragraph 25 in its entirety as inadmissible opinion,
 19 conclusion and speculation. The statement also fails to establish a factual foundation for
 20 the conclusion contained therein.

21 Court's Ruling on Objection 19: Sustained: ✓

22 Overruled: _____

23 20. Defendants object to Paragraph 26 in its entirety as inadmissible opinion,
 24 conclusion and speculation. The statement also fails to establish a factual foundation for
 25 the conclusion contained therein.

26 Court's Ruling on Objection 20: Sustained: ✓

27 Overruled: _____

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21. Defendants object to Paragraph 27 in its entirety as inadmissible opinion, conclusion and speculation. The statement also fails to establish a factual foundation for the conclusions contained therein.

Court's Ruling on Objection 21: Sustained: ☒

Overruled: ☐

22. Defendants object to Paragraph 28 in its entirety as inadmissible opinion, conclusion and speculation. The statement also fails to establish a factual foundation for the conclusions contained therein.

Court's Ruling on Objection 22: Sustained: ☒

Overruled: ☐

23. Defendants object to Paragraph 29, 7:7-9 ("While the City cited Huppert for us having no chance since officer [sic] Huppert acted within his duties in testifying before a Contra Costa grand jury that was investigating corruption in the Pittsburg Police Department.") on the grounds the statement is inadmissible opinion and conclusion. The statement is also objectionable insofar as Plaintiff failed to establish a factual foundation for the conclusions contained therein. Defendants also object to this statement as inadmissible speculation.

Court's Ruling on Objection 23: Sustained: ☐

Overruled: ☒

24. Defendants object to Paragraph 30 in its entirety as inadmissible legal opinion, conclusion and speculation. Defendants also object to this paragraph as no foundational facts are stated. It is also objectionable in that the text of the case speaks for itself. Defendants further object to this paragraph in that it contains no facts to establish the content represents anything other than the irrelevant reiteration of another's legal opinion and does not contain any facts about which the declarant has any personal knowledge.

Court's Ruling on Objection 24: Sustained: ☒

Overruled: ☐

25. Defendants object to Paragraph 31 in its entirety as inadmissible opinion, conclusion and speculation. It is also objectionable as inadmissible legal opinion and conclusion. Defendants further object to footnote one to Paragraph 31 as inadmissible hearsay.

Court's Ruling on Objection 25: Sustained: ✓

Overruled:

26. Defendants object to Paragraph 32 in its entirety as inadmissible opinion, conclusion and speculation. It is also objectionable insofar as it lacks foundation for the conclusions contained therein.

Court's Ruling on Objection 26: Sustained: ✓

Overruled:

27. Defendants object to Paragraph 33 in its entirety as inadmissible opinion, conclusion and speculation. Defendants further object to this paragraph as inadmissible legal opinion and conclusion. Defendants also object to this paragraph as no foundational facts are stated. It is also objectionable in that the text of the case speaks for itself. Defendants further object to this paragraph in that it contains no facts to establish the content represents anything other than the irrelevant reiteration of another's legal opinion and does contains facts about which the declarant has any personal knowledge.

Court's Ruling on Objection 27: Sustained: ✓

Overruled:

28. Defendants object to Paragraph 34 in its entirety as inadmissible opinion, conclusion and speculation. Defendants also object to this paragraph insofar as Plaintiff fails to establish a factual foundation for the conclusions contained therein.

Court's Ruling on Objection 28: Sustained: ✓

Overruled:

29. Defendants object to Paragraph 35 in its entirety as inadmissible opinion, conclusion and speculation. Plaintiff fails to establish a factual foundation for the conclusions contained therein.

1 Court's Ruling on Objection 29: Sustained: ✓

2 Overruled: _____

3 30. Defendants object to Paragraph 36 in its entirety as inadmissible opinion,
4 conclusion and speculation. Plaintiff fails to establish a factual foundation for the
5 conclusions contained therein.

6 Court's Ruling on Objection 30: Sustained: ✓

7 Overruled: _____

8 31. Defendants object to Paragraph 37, 9:9-13 ("Before the oral testing some
9 sergeant candidates are coached and tutored prior to examination by the command staff.
10 This sponsorship is administered inconsistently and without accreditation. This practice
11 allows for favoritism and discrimination to be applied at the discretion of the command
12 staff.") on the grounds the statements contained therein are inadmissible opinion,
13 conclusion and speculation for which Plaintiff fails to establish a factual foundation.

14 Court's Ruling on Objection 31: Sustained: ✓

15 Overruled: _____

16 32. Defendants object to Paragraph 39, 9:25-26 ("While the City contends that I
17 failed the test, they never showed me correct answers. So the test was in no way
18 objective.") as inadmissible hearsay and opinion. Furthermore, the statements are
19 conclusory and fail to establish a factual foundation for that conclusion.

20 Court's Ruling on Objection 32: Sustained: AS TO STATEMENT NO. 2

21 Overruled: AS TO STATEMENT NO. 1

22 33. Defendants object to Paragraph 40 in its entirety as inadmissible opinion and
23 conclusion. It is also objectionable as it lacks foundational facts.

24 Court's Ruling on Objection 33: Sustained: RE STATEMENTS 2-5

25 Overruled: RE STATEMENT 1

26 34. Defendants object to Paragraph 41, 10:7-8 ("It appears any officer that was a
27 part of MERGE or special operations was promoted.") as inadmissible opinion, conclusion

28 /////

1 and speculation. Plaintiff fails to establish a factual foundation for the conclusions
2 contained therein.

3 Court's Ruling on Objection 34: Sustained: ✓

4 Overruled: _____

5 35. Defendants object to Paragraph 44 in its entirety as inadmissible opinion,
6 conclusion and speculation. Plaintiff fails to establish a factual foundation for the
7 conclusions contained therein.

8 Court's Ruling on Objection 35: Sustained: ✓

9 Overruled: _____

10 36. Defendants object to Paragraph 49 in its entirety ("The public is obviously
11 upset and interested in the misuse of public funds. It is undeniable as a matter of fact a
12 matter of public interest.") on the grounds the statements contained therein are
13 inadmissible opinion, conclusion and speculation. Plaintiff also fails to establish a factual
14 foundation for the conclusions. Defendants further object to footnote 3 to paragraph 49
15 insofar as it is inadmissible hearsay, opinion and conclusion.

16 Court's Ruling on Objection 36: Sustained: ✓

17 Overruled: _____

18 37. Defendants object to Paragraph 50 on the grounds the articles and blogs
19 referenced therein lack foundation and are irrelevant and insufficient to sustain the
20 statements. The cited excerpts as well as Plaintiffs' characterization the blog and article
21 content are inadmissible hearsay objectionable because the article or blog content speaks
22 for itself. The blog and article content constitute the inadmissible opinion, conclusion and
23 speculation of the blogger, reporter or author. The content of the articles is inadmissible
24 hearsay. Although Plaintiff argues the blog or article content is not being offered for the
25 truth of the matters asserted, in order to accept the argument advanced by Plaintiffs, the

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28 /////

premise of the articles or blogs must be accepted as true, thereby requiring Plaintiffs to offer the articles for their truth.

Court's Ruling on Objection 37: Sustained: AS TO BLOG CONTENTS

Overruled: INsofar AS EXISTENCE OF BLOGS TEND TO

38. Defendants object to Paragraph 52, 12:19-20 ("Lt. Spicer told me that he

could not show e the results or anything written on paper, despite the fact that he had my score sheet in front of him.") as inadmissible hearsay, opinion, conclusion and speculation. Plaintiff also fails to establish a factual foundation for the conclusions contained in the statement.

Court's Ruling on Objection 38: Sustained: ✓

Overruled:

39. Defendants object to Paragraph 53, 12:21-22 ("... Lt. Spicer appeared to be very nervous.") as inadmissible opinion, conclusion and speculation as to a third party's state of mind.

Court's Ruling on Objection 39: Sustained:

Overruled: ✓

40. Defendants object to Paragraph 54, 12:26-28 ("[Detective Christine Lauren] was not given any special direction as to the material that should be provided to the testing officers. She told me that they were guarding the test and that only some of the Detectives were being given information to pass on to certain officers...") on the grounds the statements are conclusory as well as inadmissible hearsay and opinion.

Court's Ruling on Objection 40: Sustained: ✓

Overruled:

41. Defendants object to Paragraph 57 in its entirety as inadmissible hearsay. The same paragraph is objectionable as inadmissible opinion, conclusion and speculation. Plaintiff fails to establish a factual foundation for the conclusions contained in the paragraph and the statements are irrelevant because no evidence connects the actions

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described to an identifiable individual.

Court's Ruling on Objection 41: Sustained: ✓

Overruled:

42. Defendants object to Paragraph 58, 13:17-18 ("I am sure I scored at least a 74% on the test because I knew all the answers except a part of one question.") as conclusory and based on speculation.

Court's Ruling on Objection 42: Sustained: ✓

Overruled:

43. Defendants object to Paragraph 59, 13:21 (This score seemed unlikely to me.") as conclusory and based on speculation.

Court's Ruling on Objection 43: Sustained: ✓

Overruled:

44. Defendants object to Paragraph 61, 14:2-4 ("After this conversation, I understood he didn't want to talk to me about the test even though he is the Commander of the unit and that he was not going to tell me what part of the scenario I might have missed.") as failing to establish a factual foundation for the conclusions contained therein. It is also objectionable as it is conclusory and based on speculation.

Court's Ruling on Objection 44: Sustained: ✓

Overruled:

45. Defendants object to Paragraph 62 in its entirety as inadmissible opinion and conclusion. It is based on speculation about the motives of the testing board as stated in the following testimony "the testing board was able to score me any way they desired to keep me out of the unit." It is also objectionable as it lacks foundation for that conclusion.

Court's Ruling on Objection 45: Sustained: ✓

Overruled:

46. Defendants object to Paragraph 63, 14:7-9 ("This was done at the direction of Captain Alcantar to retaliate against me because of Officer Hernandez's complaints about Sgt. Zarate's time-card fraud.") as conclusory as well as inadmissible opinion and

speculation about another's state of mind. It is also objectionable as it lacks foundation for the conclusions contained therein.

Court's Ruling on Objection 46: Sustained: ✓

Overruled:

47. Defendants object to Paragraph 65, 14:15-17 ("But when the contract between the San Jose Police Association and the City of San Jose passed, they were able to bring two more people from the eligibility list.") as conclusory and based on speculation. It is also objectionable as it lacks a factual foundation for the conclusion contained therein.

Court's Ruling on Objection 47: Sustained: ✓

Overruled:

48. Defendants object to Paragraph 66, 14:18-20 as inadmissible hearsay as to the statements attributed to Lt. Rose. Defendants further object to paragraph 66, 14:23-25 as conclusory and based on speculation that "Lt. John Rose was telling [Plaintiff] this to discourage [her]."

Court's Ruling on Objection 48: Sustained: ✓

Overruled:

49. Defendants object to Paragraph 68, 15:3-4 ("... Lou Hernandez spoke with Officer Nolan Lem about the fact that the Family Violence Unit might change its' work week.") as inadmissible compound hearsay. Plaintiff fails to establish a factual foundation to support her statement. Defendants further object to paragraph 68, 15:5-7 ("Sergeant Bence told Nolan Lem that Lt. Rose already had a meeting with the Chief of Police and it had been decided that the Family Violence Unit would continue with a 4-day work week.") as inadmissible compound hearsay. Plaintiff fails to establish a factual foundation to support the statement.

Court's Ruling on Objection 49: Sustained: ✓

Overruled:

50. Defendants object to Paragraph 69 in its entirety as inadmissible compound hearsay. Defendant further objects to this paragraph as lacking foundation. Plaintiff's

1 characterization of the writings of Nolan Lem is also objectionable as inadmissible
 2 hearsay. The document, which has not produced, speaks for itself to the extent such a
 3 document exists. Plaintiff's characterization of Lem's letter is insufficient to sustain the
 4 statements offered.

5 Court's Ruling on Objection 50: Sustained: ✓

6 Overruled:

7 51. Defendants object to Paragraph 70, 15:21-26 as inadmissible hearsay as to
 8 the statements attributed to Lt. Larry McGrady. Defendants also object to Plaintiff's
 9 characterization of Lt. McGrady's speech at 15:24 ("Lt. McGrady back-pedaled") as
 10 inadmissible opinion, conclusion and speculation as to another's state of mind.

11 Court's Ruling on Objection 51: Sustained: ✓

12 Overruled:

13 52. Defendants object to Paragraph 72 in its entirety as the declaration fails to
 14 establish a factual foundation for the conclusions contained therein. Defendants further
 15 object to Paragraph 72, 16:1-2 ("I later learned some other officers were sent home, but
 16 were not allowed to take release time") as conclusory and inadmissible speculation for
 17 which Plaintiff fails to establish a sufficient factual foundation.

18 Court's Ruling on Objection 52: Sustained: ✓

19 Overruled:

20 53. Defendants object to Paragraph 73, 16:4 ("I was the only person sent home
 21 and asked to use my own time off.") as conclusory and based on speculation. The
 22 declaration fails to establish a factual foundation for the conclusion set forth in the
 23 paragraph.

24 Court's Ruling on Objection 53: Sustained: ✓

25 Overruled:

26 54. Defendants object to Paragraph 74, 16:7-12 ("My team...told me there was
 27 some discussion about the commanders wanting to order me to wear BDUs to Continuous
 28 Professional Training" and "I was informed that many members of my team spoke up for

me and told the [sic] Sergeant Elvander that the Commanders can't order one person to wear BDUs when no one else is being ordered to wear them.") as inadmissible hearsay. Plaintiff fails to establish a factual foundation to support the statements.

Court's Ruling on Objection 54: Sustained: ✓

Overruled: _____

55. Defendants object to Paragraph 76, 16:15-16 ("Usually it is enough that an officer shows the Sergeant the equipment or a receipt.") as conclusory and based on speculation. The statement lacks sufficient factual foundation to support the conclusions contained therein. Defendant further objects to paragraph 76, 16:18-19 ("Sgt. Elvander looked uneasy about telling me this.") as inadmissible opinion, conclusion and speculation about another's state of mind. Plaintiff fails to establish a factual foundation sufficient to support the statement.

SUSTAINED

OVERRULED

Court's Ruling on Objection 55: Sustained: _____

Overruled: _____

56. Defendants object to Paragraph 77

Court's Ruling on Objection 56: Sustained: _____

Overruled: BECAUSE NO BASIS IS STATED FOR THE OBJECTION

57. Defendants object to Paragraph 78, 16:25 ("obsessive interest") and 26-28 ("I am informed and believe the reason for this was to retaliate against me because of Officer Hernandez's complaints about Sgt. Zarate's time-card fraud.") as conclusory. It is also objectionable as inadmissible opinion and speculation. Plaintiff fails to establish a factual foundation to support her conclusions.

Court's Ruling on Objection 57: Sustained: ✓

Overruled: _____

58. Defendants object to Paragraph 79, 17:3-5 insofar as her characterization of the letter from Allison Suggs is inadmissible hearsay.

Court's Ruling on Objection 58: Sustained: ✓

Overruled: _____

59. Defendants object to Paragraph 81 in its entirety as conclusory and based on speculation about whether "the close personal relationships that Zarate had developed over the years led to [Hernandez and Calderon's] supervisors discounting reports of his corruption, and ordering Lou Hernandez not to discuss Zarate or his corruption with ANYONE inside or outside the Department." Plaintiff fails to establish a factual foundation for the conclusions contained within the paragraph.

Court's Ruling on Objection 59: Sustained: ✓

Overruled: _____

60. Defendants object to Paragraph 82 in its entirety as based on speculation about "what the brass may have felt." Plaintiff fails to establish a factual foundation for the opinions and conclusions contained in this statement. This statement is inadmissible speculation about the state of mind of third parties.

Court's Ruling on Objection 60: Sustained: ✓

Overruled: _____

61. Defendants object to Paragraph 83 in its entirety as conclusory, inadmissible opinion and based on speculation that the San Jose Police Department brass "ignored multiple citizen complaints." Plaintiff fails to establish a factual foundation for that conclusion and opinion. Defendants further object to paragraph 83, 17:17-19 ("The San Jose Police Department brass...committed misconduct toward [Hernandez and Calderon] that was illegal and unconstitutional.") as inadmissible legal opinion and conclusion for which Plaintiff failed to establish a sufficient factual foundation.

Court's Ruling on Objection 61: Sustained: ✓

Overruled: _____

62. Defendants object to Paragraph 84 in its entirety as conclusory, inadmissible opinion and based on speculation. This paragraph, 17:22-23 ("It was the Department that
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1 trampled on our Constitutional Rights.") is also objectionable as inadmissible legal opinion
2 and conclusion for which Plaintiff failed to establish a sufficient factual foundation.

3 Court's Ruling on Objection 62: Sustained: ✓

4 Overruled: _____

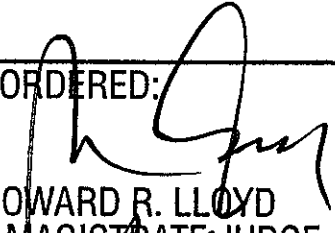
5 Respectfully submitted,

6 Dated: _____

RICHARD DOYLE, City Attorney

7
8 By: /s/ Nkia D. Richardson
9 NKIA D. RICHARDSON
10 Sr. Deputy City Attorney

11 Attorneys for Defendants

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13 IT IS SO ORDERED:
14 
15 HOWARD R. LLOYD
16 U.S. MAGISTRATE JUDGE
17 DATE: 8/19/13
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RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
ARDELL JOHNSON, Chief Deputy City Attorney (95340)
NKIA D. RICHARDSON, Sr. Deputy City Attorney (193209)
Office of the City Attorney
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E-Mail Address: cao.main@sanjoseca.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY
CALDERON,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendant.

Case Number: CV12-02952 HRL
~~COURT RUNNING RE~~
**DEFENDANTS' OBJECTIONS TO
DECLARATION OF THOMAS K.
BOURKE**

Date: July 9, 2013
Time: 10:00 am
Courtroom: 2
Mag. Judge: Howard R. Lloyd

Defendants City of San Jose, San Jose Police Department, Ernie Alcantar and James Werkema object to the Declaration of Thomas K. Bourke submitted In Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment as follows:

1. Defendants object to Paragraph 7 in its entirety inadmissible hearsay, opinion and conclusion. The online forum, blog or article referenced in paragraph 7 lacks foundation and is irrelevant and insufficient to sustain the statements contained in the declaration. Plaintiffs' characterization of the online forum, blog or article referenced in paragraph 7 is inadmissible hearsay and is objectionable because the content of the forum/blog/article speaks for itself. The content of the forum, blog or article constitutes the inadmissible opinion, conclusion and speculation of the bloggers, reporters or authors and

1 is inadmissible hearsay. In order to accept the argument advanced by Plaintiffs, the
 2 premise of the online forum, blog or article must be accepted as true, thereby requiring
 3 Plaintiffs to offer the forum, blog or article for their truth.

4 Court's Ruling on Objection 1: Sustained: ✓

5 Overruled:

6 2. Defendants object to Paragraph 8 in its entirety as inadmissible hearsay,
 7 opinion and conclusion. The cited findings of the Knapp Commission are irrelevant and
 8 lack foundation.

9 Court's Ruling on Objection 2: Sustained: ✓

10 Overruled:

11 3. Defendants object to Paragraph 9 in its entirety as it lacks sufficient
 12 foundation to support the statements therein. Defendants further object to this paragraph
 13 as inadmissible opinion, conclusion and speculation. Defendants statement that police
 14 department's higher ups "feel that they have the power to cover things up" is objectionable
 15 as speculation as to the state of mind of other third parties.

16 Court's Ruling on Objection 3: Sustained: ✓

17 Overruled:

18 4. Defendants object to Paragraph 10 in its entirety as it lacks sufficient foundation to
 19 support the statements contained therein. This paragraph is also objectionable as the

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1 cited portions from Wikipedia are inadmissible hearsay, opinion and conclusion.
2 Defendants also object to paragraph 10 as the content, or subject, of a Hollywood movie is
3 inadmissible hearsay and irrelevant.

4 Court's Ruling on Objection 4: Sustained: ✓
5 Overruled: _____

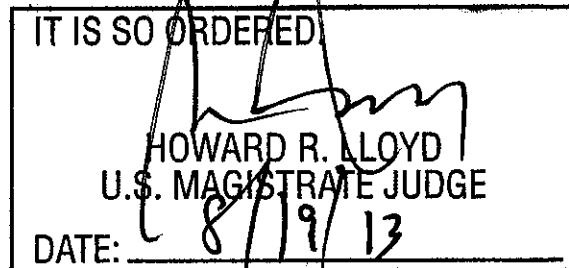
6 Respectfully submitted,

7
8 Dated: _____

RICHARD DOYLE, City Attorney

9
10 By: /s/ Nkia D. Richardson
11 NKIA D. RICHARDSON
12 Sr. Deputy City Attorney

13 Attorneys for Defendants



RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
ARDELL JOHNSON, Chief Deputy City Attorney (95340)
NKIA D. RICHARDSON, Sr. Deputy City Attorney (193209)
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E-Mail Address: cao.main@sanjoseca.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY
CALDERON,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case Number: CV12-02952 HRL

**COURT RULINGS RE
DEFENDANTS' OBJECTIONS TO
DECLARATION OF MATT ELVANDER**

Date: July 9, 2013

Time: 10:00 am

Courtroom: 2

Mag. Judge: Howard R. Lloyd

Defendants City of San Jose, San Jose Police Department, Ernie Alcantar and James Werkema object to the Declaration of Matt Elvander submitted In Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment as follows:

1. Defendants object to Paragraph 2, 1:10 ("Officer Hernandez was reluctant to go to the meeting...") as inadmissible speculation about another's state of mind.

Court's Ruling on Objection 1: Sustained: ☒

Overruled: ☐

2. Defendants object to Paragraph 3, 1:18-19 ("I was shocked that Capt. Alcantar would make such an order which is obviously illegal on its face.") as inadmissible

/////

1 legal opinion and conclusion. The declarant fails to establish sufficient factual foundation
2 to support this conclusion.

3 Court's Ruling on Objection 2: Sustained: ✓

4 Overruled: _____

5 3. Defendants object to Paragraph 4, 1:20-21 ("...there was no conceivable
6 justification for such a broad order.") as inadmissible opinion, conclusion and speculation
7 for which the declarant failed to provide sufficient foundation to support the statement.
8 Defendants also object to Paragraph 4, 1:21-23 ("Capt. Alcantar told Officer Hernandez
9 that he had 'a lot of friends' in the Department and insinuated that he would make life
10 difficult for me if I did not obey the order.") as inadmissible hearsay as well as inadmissible
11 opinion, conclusion and speculation regarding another's state of mind.

12 Court's Ruling on Objection 3: Sustained: ✓

13 Overruled: _____

14 4. Defendants object to Paragraph 5, 1:28 ("their failing didn't seem fair") as
15 inadmissible opinion and conclusion. Defendant also objects on the grounds that the
16 declarant's personal belief is irrelevant.

17 Court's Ruling on Objection 4: Sustained: ✓

18 Overruled: _____

19 5. Defendants object to Paragraph 6, 2:2-3 ("Lt. Spicer told me that there was
20 not anything either one of the could do to get into this unit.") as inadmissible hearsay.
21 Defendants further object to Paragraph 6, 3-5 ("I understood Lt. Spicer to mean that Officer
22 Hernandez or Calderon's score was not relevant to him and that he would not allow them

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1 in the Unit because of some personal animosity he had toward them.") as inadmissible
2 opinion, conclusion and speculation about another's state of mind.

3 Court's Ruling on Objection 5: Sustained: ✓

4 Overruled: _____

5
6 Respectfully submitted,

7 Dated: _____

RICHARD DOYLE, City Attorney

9
10 By: /s/ Nkia D. Richardson
NKIA D. RICHARDSON
Sr. Deputy City Attorney

11 Attorneys for Defendants

12
13
14 IT IS SO ORDERED.
15
16 HOWARD R. LLOYD
17 U.S. MAGISTRATE JUDGE
18 DATE: 8/19/13

RICHARD DOYLE, City Attorney (88625)
 NORA FRIMANN, Assistant City Attorney (93249)
 ARDELL JOHNSON, Chief Deputy City Attorney (95340)
 NKIA D. RICHARDSON, Sr. Deputy City Attorney (193209)
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 E-Mail Address: cao.main@sanjoseca.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY
 CALDERON,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case Number: CV12-02952 HRL
COURT RULING RE
DEFENDANTS' OBJECTIONS TO
DECLARATION OF THOMAS
CORREA

Date: July 9, 2013
 Time: 10:00 am
 Courtroom: 2
 Mag. Judge: Howard R. Lloyd

Defendants City of San Jose, San Jose Police Department, Ernie Alcantar and James Werkema object to the Declaration of Thomas Correa submitted in Support of Response to Defendants' Motion for Summary Judgment as follows:

1. Defendants object to the Declaration of Thomas Correa in its entirety as irrelevant and an attempt to bring forth a mini-trial of Correa's own claims. Defendant also objects to Correa's declaration as inadmissible hearsay, opinion and conclusion. This declaration is also objectionable as based upon speculation without sufficient foundational facts to support the conclusion and speculation contained therein. Correa is the plaintiff in a separate and unrelated lawsuit currently pending before this Court. See United States District Court Case No. CV12-05436. He is represented by the same attorney

1 representing Plaintiffs Hernandez and Calderon. Correa's personal beliefs, opinions and
2 conclusions in his own litigation are irrelevant to the claims raised by the plaintiffs in the
3 above-captioned matter.

4 Court's Ruling on Objection 1: Sustained: ✓

5 Overruled: _____

6 Respectfully submitted,

7 Dated: _____

RICHARD DOYLE, City Attorney

9 By: /s/ Nkia D. Richardson
10 NKIA D. RICHARDSON
11 Sr. Deputy City Attorney

12 Attorneys for Defendants

13 IT IS SO ORDERED:

14 
15 HOWARD R. LLOYD
16 U.S. MAGISTRATE JUDGE

17 DATE: 8/19/13
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